IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

OP.No. 25711 of 1999(J)

PETITIONER:

R.UNNIYAPPAN,
U.P.S.A.,
DHATHRI GIRLS HIGH SCHOOL,
KOLLANGODE, PALAKKAD DISTRICT.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GENERAL
EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.

4. DISTRICT EDUCATIONAL OFFICER,
PALAKKAD.

BY SENIOR GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO.25711/1999/J

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE G.O.RT.NO.5748/93/GE, DATED 28-10-1993 PASSED BY THE ADDITIONAL SECRETARY TO GOVERNMENT.

EXT. P2: COPY OF THE G.O.(RT) NO.310/98/GE, DATED 23-1-1998 ISSUED BY THE GOVERNMENT OF KERALA.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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O.P. No. 25711 of 1999(J)

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Dated, this the 4th day of December, 2007

JUDGMENT

Pending criminal proceedings, the petitioner, a teacher in the Dhathri Girls High School, Kollangode was suspended from service. Subsequently, he was acquitted in the criminal case by the Criminal Court. Pursuant to that the petitioner was reinstated in service. However, by Ext.P1 order the Government directed that although his period of suspension from 22.3.86 to 17.5.90 will be treated as duty for all purposes, he will be allowed to draw pay and allowance only at the rate of 75% in the said period after adjusting the subsistence allowance if any, paid already. Petitioner filed a review petition against Ext.P1 order, which was also rejected by Ext.P2. Petitioner is challenging Exts. P1 and P2.

2. The contention of the petitioner is that once the petitioner is acquitted of the criminal charges he is automatically entitled to payment of full salary and allowance on reinstatement.

3. The learned Government Pleader submits that payment of salary is not automatic on reinstatement on acquitted in criminal case. It depends on the circumstances under which he was acquitted and whether the petitioner has been acquitted of blame. He further submits that under rule 56(B) of Part I of KSR an authority competent to order reinstatement has to consider whether the suspension was wholly unjustified and only when it comes to the conclusion that the suspension was wholly unjustified, the reinstatement can be with full salary and allowances. He points out that as is clear from Exts.P1 and P2, the petitioner has been acquitted by giving the benefit of doubt. In the decision in **Mohammed Essa Sahib v. D.I.G. of Police** (1990 (2) KLT 462), this Court has held that the employee when acquitted giving the benefit of doubt, he would not be entitled for the salary for the period of suspension automatically. After hearing both sides I am inclined to agree with the learned Govt. Pleader. In this case evidently, the petitioner was acquitted giving benefit of doubt. As such it cannot be said that the suspension of the petitioner was wholly unjustified. The decision relied upon by the Govt. Pleader also

supports that view. The Govt. has exercised its discretion in the matter and directed payment of 75% of the salary and allowance to the petitioner which cannot be held to be improper or unreasonable in the circumstances. Therefore, I find no merit in this original petition and accordingly, the same is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

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